

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Civil Misc. Writ Petition No. 1230 of 2001
(Old No. 47283 of 1999)

- (1) Lal Singh Rana
S/o Shri Paddal Singh Rana
R/o Village Deshibhuria
Post Pratappur No. 4, Khatima
District Udam Singh Nagar.
- (2) Anil Kumar Singh
S/o Shri Indradeo Singh
R/63/5, Vishnupuri Colony,
Nawabganj, Kanpur.

.....Petitioner.

Versus

- (1) State of U.P.
through Secretary Excise Department
Government of U.P., Lucknow.
- (2) Excise Commissioner, U.P.
Allahabad.
- (3) Dy. Excise Commissioner
Kumaun Division,
Nainital.

.....Respondents.

Hon'ble Prafulla C. Pant, J.

By means of this writ petition, petitioners have sought writ in the nature of certiorari quashing the notice dated 08.10.1999, issued by Deputy Excise Commissioner, Moradabad, against the petitioners directing them to show cause as to why their services be not terminated for being not physically qualified for the post of Constable with U.P. Excise Department.

(2) Heard Sri Subhash Upadhyay, learned counsel for petitioner no. 1 and Sri H.M. Raturi, learned counsel for respondents.

(3) Brief facts of the case, as narrated in the writ petition, are that the petitioners in response of the advertisement dated 08.08.1997, submitted their applications for appointment to the post of Constable in U.P. Excise Department. They qualified the written and interview tests. In pursuance to the appointment letter dated 22.10.1997, issued to them, they submitted the certificate of physical fitness issued by Chief Medical Officer, Nainital and Kanpur, and joined their services in the Department. However, in the year 1998, they were again directed to produce fresh certificate from Chief Medical officer, this time requiring certain physical measurements including that of the chest. Measurements of chest of the petitioner no. 1, as shown in the physical fitness certificate dated 09.07.1998, by Chief Medical Officer, Nainital, were found-expanded 86.6 cm, unexpanded 81.4 cm (copy Annexure 8 to the writ petition). And relating to

petitioner no. 2, measurements of chest were found to be expanded 97 cm and unexpanded 91 cm (copy Annexure 9 to the writ petition). Thereafter, petitioners were served with the impugned show cause notice of termination, against which this petition was filed before Allahabad High Court and an interim order was passed on 15.11.1999. This writ petition is received by this court under Section 35 of U.P. Reorganization Act, 2000, for its disposal.

(4) In the counter affidavit respondents have admitted that the petitioners were appointed as Constables with U.P. Excise Department and they produced the physical fitness certificate. It is also admitted that they were served with impugned show case notice. However, rest of the contents, as stated in the writ petition, are not admitted and it has been stated that certain complaints were received by the higher authorities that the appointment of the petitioners were made in violation of Rule 13 of the Rules applicable to the Constables of U.P. Excise Department. In compliance of said Rules fresh physical verification was done and the impugned notices were issued against the petitioners. Alleging that the petitioners did not qualify the standards required for physical fitness of the Constables, it is stated that the impugned notices were rightly issued against them.

(5) Annexure CA-1, is the copy of order showing physical measurements got again recorded through Chief Medical Officer, Allahabad, which shows following measurements with regard to the petitioners:-

Serial No.	Name	Chest (Unexpanded) (C.m)	Chest (Expanded) (C.m)	Height (C.m)
23.	Lal Sing Rana	80.5	86.0	172
24.	Anil kumar Singh	81.0	87.0	173.3

(6) As far as petitioner no. 2 Anil Kumar Singh is concerned, no one appeared to press this petition on his behalf.

(7) The physical standards required are also mentioned in Annexure CA-1 to the counter affidavit, which shows that minimum unexpanded chest should be 81.3 cm, expanded chest 86.4 cm and height should be 167.6 cm (for the candidates of Kumaun and Garhwal 162.6 cm). Petitioner no. 2 Anil Kumar Singh's measurements are above the prescribed limits except for the unexpanded chest, which is short by 0.3 cm. However, Annexure 9, which is copy of physical fitness certificate issued by Chief Medical Officer, Pithoragarh, shows that at the time of the entry of the petitioner no. 2 his unexpanded chest was 91 cm, and expanded chest was 97 cm i.e. above the minimum requirement. As far as petitioner no.1 is concerned, a supplementary affidavit has been filed on his behalf, which shows that during the pendency of writ petition, a State level Medical Board was constituted for reexamining the physical fitness. Annexure SA-2 to the writ petition is the copy of the report of the State Medical Board, which shows that the unexpanded chest of petitioner no. 1 Lal Singh Rana was

found 84 cm, while the expanded chest was found 90 cm, which shows that the measurements in respect of this petitioner was above the prescribed limits. The State level Medical Board, headed by Director Medical Health, which consists of other two members with him supercedes the physical fitness certificate issued by the Chief Medical Officer in the year 1998. In the circumstances, since the medical certificate submitted by the petitioner no. 1 at the time of entry in the service in the year 1997, as well as the certificate issued by State level Medical Board does not show if the petitioner no.1 does not fulfill the physical standards required under the Rules, the impugned notice issued against him is liable to be quashed.

(8) Therefore, the writ petition, as far as the petitioner no.1 is concerned, is allowed and the impugned order passed against him is quashed. Nobody pressed the petition for petitioner no.2, and the same stands dismissed as not pressed.

(Prafulla C. Pant, J.)

04.9.2007
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